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SUBJECT: EUROPOL - U.S. COOPERATION

**1.** Summary. The mission of Europol (the European Police Office) has steadily expanded from its initial focus on fighting drugs to encompass all serious crimes, including terrorism, illicit migration, trafficking in persons, child pornography, money-laundering and counterfeiting of the Euro. Within the last year and a half the U.S. has signed two cooperative agreements with Europol. While it is expected that the initial flow of information will largely be from the USG to Europol, these agreements will allow the U.S. to develop a deepening cooperative relationship as Europol grows in stature within the EU and acquires a more expansive role in police work. This is being submitted as part of the Mission's reporting plan. End summary.

#### Mission and Function of Europol

**2.** Europol is an evolving police institution of the European Union whose primary mission at this time is to facilitate the coordination and cooperation of member states in the field of criminal law enforcement. At the present time it has limited operational authority and its personnel do not arrest people or engage in searches and seizures. Europol operates under its own Convention which came into force on October 1, 1998. Europol commenced its full activities on July 1, 1999. Membership in Europol is part of the *acquis*; accordingly, all accession countries will be members of Europol as part of their obligation to adhere to the EU institutions and principles. Through the pooling of information and data concerning those aspects of crime which affect two or more of their members, Europol is able, in theory at least, to provide all members with better insight into the crime problem they face and how best to respond to it. Europol's "added value" to member states, in theory, lies in its ability to perform critical analysis and to render coordinative assistance to member states in fighting primarily transnational organized crime and terrorism. Under the Europol convention, all members must assign one or more "liaison" officers to Europol headquarters in The Hague and ensure that these officers have access on line to the various police databases maintained by their respective country. Noteworthy is the fact that member states are not pooling their databases but merely making them potentially accessible in one centralized location in The Hague. Within a relatively short period of time, Europol has evolved from a small entity with jurisdiction limited to the drug area to its present jurisdiction over all serious crimes, including terrorism, illicit migration, trafficking in persons, child pornography, and money-laundering, with primary jurisdiction over counterfeiting of the Euro. Europol is funded by contributions from the EU Member States according to their GNP. Its 2003 budget is Euro 55.5 million. There are currently 386 staff members from all Member States. Of these, 59 are Europol Liaison Officers representing a variety of law enforcement agencies (police, customs, gendarmerie, immigration services, etc.) The Directorate of Europol is appointed by the Council of the European Union. The Directorate currently consists of Director Jurgen Storbeck (German) and Deputy Directors Willy Bruggeman (Belgium) and Mariano Simancas (Spain).

**3.** Europol has improved its international law enforcement cooperation by signing bilateral agreements with the following non-EU states and international organizations: the European Central Bank, the European Monitoring Center on Drugs and Drug Addiction, Iceland, Norway, and the World Customs Organization. It is currently in negotiations with Canada.

#### Europol's Weakness

**4.** The Europol Convention is an extremely complex instrument. It contains precise and cumbersome rules concerning the handling of personal data, reflective of the Union's collective fears of massive human rights violations by police organizations, which are not usually closely controlled. While obviously a worthy objective, the rules are so stringent with respect to the handling of personal data as to make it extremely difficult for the organization to function effectively. It is suggested that the same objectives could be accomplished in a more efficacious fashion so as to strike a more appropriate balance between the security needs of the nation and the protection of human

rights.

15. Europol depends on others to provide it with the raw data which form the basis of its analytical work. However, a critical tenet of the Convention is that member states retain control over their own data and dictate what is to be shared with Europol and with member states through the Europol process. Thus member states can and do withhold information from Europol, which impedes its ability to perform its assigned tasks. Nowhere is this more dramatically seen than in the field of terrorism where, following the September 11 attack, the JHA ministers publicly criticized their own organizations for not sharing critical data on terrorism with Europol. Europol can only propose investigations to member states but cannot compel such inquiries. Europol cannot send out its officials to conduct interviews, perform searches or make arrests. Europol is generally disliked if not despised by many EU member police organizations. These organizations tend to resent Europol's existence and view it as criticism of their own efforts at coordination, which they maintain, have worked effectively over the years. In this regard, it should not be forgotten that Europol is a political creation and its establishment was not driven by perceived needs of law enforcement but rather the political desire for greater integration in the JHA arena. The JHA ministers are consistently conferring more and more jurisdiction on Europol. It is likely that the new EU Constitution (due to be unveiled in June 2003) will provide Europol with some limited operational role as well as the authority to order a country to commence an inquiry. Over time, Europol could evolve into the nucleus of a federal EU police structure.

#### Relations with the United States

16. In a relatively short period of time we have been able to conclude and put into effect two agreements with Europol which provide a legal basis for exchanging all forms of information, including personal data. An outgrowth of the events of 9/11, the initial agreement between the U.S. and Europol was signed in Brussels in December, 2001, to enable the sharing of strategic data and to facilitate cooperation on joint threat assessments. The logical next step was a follow-on agreement to allow the exchange of personal data. The stringent data privacy restrictions imposed by Europol's Convention, monitored by its Joint Advisory and Management Boards, tempered assessments of the potential success of the negotiations. These concerns were eventually addressed to the satisfaction of Europol's data protection counselors and the second agreement was signed in Copenhagen in December, 2002.

17. We are in the process of implementing these agreements with all U.S. law enforcement agencies. Last year the JHA ministers directed that Europol open a liaison office in Washington. In August, two officers arrived in Washington to take up this assignment. The precise terms of reference for these officers are being developed on an interagency basis. There is agreement within the USG that the National Crime Bureau (NCB) in Washington should be the point-of-contact for Europol. However, tensions still exist regarding the exchange of information concerning terrorism; Europol wants access to more case-related information. The U.S. does not have a liaison officer assigned to Europol.

18. Comment. Europol's critical analysis of transnational crime data coming from two or more EU Member States is an "added value" to bilateral law enforcement agreements which can provide information from only a single national perspective. At least in the short run, it is anticipated that U.S. agencies will be providing more data to Europol than it will provide us. Nevertheless, the two U.S. agreements will allow us to develop a deepening cooperative relationship with Europol as it grows in stature within the EU. This will prove useful in our joint fight against terrorism. End comment.

SCHNABEL